**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929**

**WP(C).No. 15303 of 2007(V)**

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**(AGAINST E.A.498 & 498(A) IN E.P.215/03**
**IN OS.287/1997 of the SUB COURT,THRISSUR)**

**.....**

**PETITIONER:**

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**V.A. FRANCIS, AGED 48 YEARS,**
**S/O.ANTONY, VADAKETHALA VEMMATH HOUSE,**
**KANDASSANKADAVU DESOM, KARAMUCK VILLAGE,**
**THRISSUR.**

**BY ADV. SRI.SHOBY K.FRANCIS**

**RESPONDENTS:**

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1. **DELUX KURIES & LOANS (P) LTD.,**
   **THRISSUR-1.**

2. **V.P. DAVIS, VADAKETHALA OUTHOODAN HOUSE,**
   **KANDASSANKADAVU DESOM,**
   **KARAMUKKU VILLAGE, THRISSUR.**

3. **CANARA BANK, KANDASSANKADAVU BRANCH,**
   **THRISSUR DISTRICT, REPRESENTED BY**
   **ITS MANAGER.**

**BY ADV. SRI.M.R.GOPALAKRISHNAN NAIR for r3**
**SRI.V.R.KESAVA KAIMAL for R1**
**SRI.N.M.MADHU**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

## APPENDIX

**PETITIONER'S EXHIBITS:**

**EXT.P1:** COPY OF THE SALE DEED NO.2700/98 OF S.R.O.ANTHIKKAD DTD. 18/11/98.

**EXT.P2;** COPY OF THE OBJECTION FILED BY THE PETITIONER ON 3/09/04.

**EXT.P3:** COPY OF THE NOTICE DTD. 23/01/2006 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

**EXT.P4:** COPY OF THE ADDITIONAL OBJECTION FILED BY THE PETITIONER DTD. 27/01/05.

**EXT.P5;** COPY OF THE ORDER OF THE EXECUTION COURT DTD. 5/02/07.

**EXT.P6;** COPY OF THE ORDER IN E.A.498 & E.A.498 (A)/2006 IN E.P.215/03 INO.S.287/97.

/TRUE COPY/

*KSS*

**M.N.KRISHNAN, J**

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**W.P.(C) No.15303 OF 2007**

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**Dated this the 13th day of July, 2007**

**JUDGMENT**

This writ petition is filed to set aside Exts.P5 and P6 orders and to consider Exts.P2 and P4 objections of the petitioner. The decree holder in the suit is a kuri company and for realisation of the decree amount, it proceeded against the property of the judgment debtor. The property involved was mortgaged with the Canara Bank for raising loan by the judgment debtor and his wife and there was a mortgage subsisting at the time of execution of the application. Therefore the bank brought it to the notice of the court and the court thereafter directed that the mortgage with the bank also be incorporated in the draft proclamation. Accordingly, the proclamation was amended, the sale was conducted and the decree holder has bid in auction and it is posted for confirmation also. Now it is at this stage, the judgment debtor wants the whole thing to be set aside on the ground that his objection under Section 60(c) has not been considered. Whatever it may be, there are statutory provisions in the Code of Civil Procedure wherein petitions can be filed to set aside the sale, i.e. in the form

of Order XXI Rule 89 and Order XXI Rule 90 C.P.C. There is also a time stipulation for the same. Without resorting to the legal remedies available under the Code of Civil Procedure, now an attempt is made requesting this court to exercise the jurisdiction under Article 227 of the Constitution. It may not be correct to exercise the discretion in a case where the statute specifically provides for remedies to the parties. The statute also prescribes a time limit for invoking such remedies. Article 227 cannot be used to defeat the provisions of the Code of Civil Procedure or to circumvent the procedural formalities. Therefore I do not find any merit in this writ petition. Hence it is dismissed.

If the petitioner wants to settle the matter with the decree holder, it is made clear that this judgment will not stand in his way and he is free to settle it. If the petitioner has got any statutory remedy, he may pursue it in accordance with law.

**M.N.KRISHNAN, JUDGE**

**Cdp/-**